IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NOS.16104 & 19900 OF 2004

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W.P.NO: 16104 of 2004

Between:

1. M/s Dankuni Steels Limited, A Public Limited Company incorporated under the provisions of Companies Act, 1956,
(Unit CONCAST FERRO Inc), having its Registered Office at 8, Bentinck Street, Kolkata, rep.by its Director, Sri Sanjay Sureka, S/o Sri Vijay Shankar Sureka, aged 33 years.

2. M/s S.M.C.Marketing (P) Limited, having its Office at Room No.617, 6th Floor, P 41, Princep Street, Kolkata, rep.by authorized Representative, Sri Amar Chand Choudary, S/o Late Sri Totaram Choudary,aged 43 years,R/o 31, G.T.Road,North Howrah-711 101.

..... PETITIONERS

AND

1. M/s Midwest Iron & Steel, (in Liquidation), rep.by its Official Liquidator, High Court of Andhra Pradesh, Hyderabad.
2. The General manager, District Industries Centre, Srikakulam,
Srikakulam District.
3. The Sub-Registrar, Amudalavalasa, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ, direction or order especially in the nature of Writ of Mandamus directing the third respondent to register the document executed by the first respondent in respect of the property purchased by the petitioners in a court auction, at the price stated in the sale deed by applying G.O.Ms.Nos.9 and 103 Revenue (Registration) Department dated 07-02-2001 and release the sale deed in favour of the petitioner

and pass such other order.

Counsel for the Petitioner No.1: MR.N.SRIDHAR REDDY

Counsel for the Petitioner No.2: MR. SHYAM S. AGARWAL (with consent)

Counsel for the Respondent No.1: Official Liquidator

Counsel for the Respondent Nos.2 & 3: GP FOR REVENUE

WRIT PETITION NO: 19900 of 2004

Between:

1. M/s. Dankuni Steels ltd., A Public Limited Company Incorporated under the Provisions of Companies act, 1956,
(unit CONCAST FERRO inc), having its registered office at 8, Bentinck street, Kolkata - 700 001.
2. M/S. S.M.C. MARKETING (P) LTD., having its Office at Room No.617, 6th floor, P 41, Princep Street, Kolkata- 700 001.

(Both represented by Authorised Representative, Sri Amar Chand Chowdhary, S/o late Sri Totaram Choudary, R/o.31, GT Road, North Howrah – 711 101.)

..... PETITIONERS

AND

1. M/s. Midwest Iron & Steel (P) Ltd., (in Liquidation), rep. by the Official Liquidator, High Court of A.P., Hyderabad.
2. The General Manager, District Industries Centre, Srikakulam,
Srikakulam District.
3. The Sub-Registrar, Amudalavalasa, Srikakulam District.
4. The District Registrar of Assurances & Collector, Under Sec 40 of the Indian Stamp Act, 1989, Srikakulam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, direction or order especially in the nature of writ of certiorari quashing the Order No.I-8/2004/G1(C.No.1258/2004/G1) dated 5th October, 2004 passed by the 4th respondent as illegal, arbitrary and unconstitutional and pass.

Counsel for the Petitioner: MR.S.RAVI

Counsel for the Respondent No.1: The Official Liquidator

Counsel for the Respondent Nos.2 to 4: GP FOR REVENUE

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NOS.16104 & 19900 OF 2004

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COMMON ORDER:

Since these two petitions are interconnected, they are being disposed of by a common order.

2. The facts, which are not in dispute, are M/s.Midwest Iron & Steel Private Limited (hereinafter called 'the Company') went into liquidation whereupon the official liquidator took possession of its assets as per the orders of the Company Court. A learned single Judge of this Court, by his order dated 22-09-2003 accorded permission to the official liquidator to sell the assets of the Company in three lots viz., Land, Buildings and Civil Works as Lot No.1; Plant and Machinery as Lot No.2; and Current Assets and Swaraj Mazda Vehicle as Lot No.3. Official liquidator, who advertised sale of the said assets as per the above order, reported to the learned Judge that against the minimum upset price of Rs.40,13,000/- for Land, Buildings and Civil works; Rs.6,22,10,000/- for Plant and Machinery; and Rs.43,60,000/- for Current Assets, offers received by him on 05-11-2003 were for Rs.1.00 crore, Rs.2.65 lakhs and Rs.27 lakhs respectively for those three lots, whereupon a direction to negotiate further with the bidders was given by the learned Judge to the official liquidator, who reported to the learned Judge that as per further negotiations fresh offers received by him on 04-12-2003 were for Rs.101.05 lakhs, Rs.301.00 lakhs and Rs.29.50 lakhs for lots 1 to 3 respectively. On 16-12-2003, the learned Judge directed the official liquidator to conduct fresh negotiations not only with the bidders who submitted their bids, but with others also. On

06-01-2004, the official liquidator reported to the learned Judge that M/s.Concast

Ispat Limited, Kolkata, made a consolidated offer for Rs.5,76,00,000/- for those three lots. When directed to make further negotiations with other bidders also, official liquidator reported that M/s.SMC Marketing Private Limited (second petitioner) evinced interest to purchase the three lots for Rs.6,01,00,000/-; M/s.Kalyaneswari Properties Pvt. Ltd. offered Rs.6,03,00,000/-; and M/s.Vishnu Iron & Steel Company offered Rs.6,61,00,000/-, whereupon a direction to give notice to all the bidders that an auction (for consolidate sale) of the three lots would be conducted in the Court Hall on 04-02-2004 at 2-15 P.M., was given by the learned Judge and at that auction second petitioner figured as the highest bidder for Rs.8,35,00,000/- which was accepted, and the sale was confirmed in its favour with certain conditions. After depositing a part of the sale consideration, second petitioner filed C.A.No.736 of 2003 seeking permission of the Court to repair, overhaul the plant and Machinery and to clear the surroundings of the company, by giving an undertaking with regard to payment of the balance sale consideration. By the order dated 06-04-2004, a learned Judge allowed the petition of the second petitioner on some conditions. Thereafter, second petitioner filed C.A.No.1202 of 2004 inter alia seeking a direction to the official liquidator to execute a sale deed in respect of the Land, Building and Machinery of the Company in favour of its nominee M/s.Dankuni Steels Ltd. (first petitioner) for Rs.40,13,000/-. By the order dated 15-06-2004, while according permission to the official liquidator to execute a sale deed in favour of the first petitioner, the learned Judge observed that value of the property, in respect of which the conveyance deed is to be executed, would be decided by the registering authority. In pursuance of that order, official liquidator executed a sale deed in respect of Land, Buildings and Civil Works showing their value as Rs.1,01,05,000/- and presented it for registration before the Sub-Registrar, Amudalavalasa (third respondent). Petitioners claimed benefit of G.O.Ms.No.103 dated 07-02-2001. By his communication dated 12-08-2004, third respondent, informed the first petitioner that registration of the document is kept pending for the following reasons:

1. The chargeable value as per the contents of the document has been assessed by the registering officer to be Rs.8,35,00,000/- but the parties stated the value of land and buildings that are alone being transferred through the present deed is Rs.1,01,05,000/- only. The document is therefore kept pending for detailed scrutiny.

2. The parties are claiming 50% exemption under G.O.Ms.Nos.9 & 103 and paid 50% of the stamp duty, transfer duty and registration fee on the value of Rs.1,01,05,000/-. The G.Os. have to be verified thoroughly.

3. The land in some of the S.Nos. is found to be Government land as per the records available at this office. A clarification has to be obtained from the Mandal Revenue Officer concerned.

4. After scrutiny the document will be referred to higher authorities under relevant provisions of the laws in force if necessary.

Questioning the said communication petitioners filed W.P.No.16104 of 2004. Thereafter by his order dated 05-10-2004 the District Registrar, Srikakulam (fourth respondent), directed the first petitioner and the official liquidator to deposit Rs.86,29,025/- as stamp duty besides penalty of Rs.1,000/-. Questioning that order petitioners filed W.P.No.19900 of 2004.

3. Placing strong reliance on the proviso to Section 47A(6) of the Stamp Act, G.O.Ms.No.103 Revenue (Registration.II) Department dated 07.02.2001 and the letter No.1769/A4/04 dated 13.08.2004 addressed to the fourth respondent by the General Manager, District Industries Centre, Srikakulam, and an unreported decision **Sub-Registrar of Assurances and another vs. M/s. Sri Bharatia Pulverisers Private Limited**, Sri S.Ravi, learned counsel for petitioners, contended that the orders impugned in the petitions are not sustainable. It is also his contention that the ratio in **M/S. DUNCANS INDUSTRIES LTD. v. STATE OF U.P.**, basing on which fourth respondent passed the order impugned in W.P.No.19900 of 2004, has no application to the facts of the case.

4. On my directions, the Official liquidator produced the concerned file before me. I have perused the said file.

5. Though the Company Court initially directed auction of the assets of the Company in three lots, having felt that the bids received for the lots are inadequate, the learned Judge directed sale of all the three lots i.e. (i) Land, Buildings and Civil Works;
(ii) Plant and Machinery; and (iii) Current Assets and Swaraj Mazda vehicle, as one lot only. Therefore, the fact that the Company Court originally directed sale of the assets of the Company in three lots has no relevance for deciding these petitions because second petitioner, admittedly, purchased the assets of the company as one

lot only, in the open auction held by the Company Court, but not as three different lots.

6. It is no doubt true, as per the proviso to Section 47A(6) of the Stamp Act, instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force and wholly owned by Central/State Government, the market value of the property shall be the value shown in such instrument. This provision, far from helping the petitioners, would go against their contention that sale deed can be executed for Lot 1 only, inasmuch as assets of the company were advertised for sale in three lots, because all the three assets of the company were purchased by the second petitioner only as one lot, but not in three different lots, and since there is nothing in the sale deed in question to show the exact value of the Land, Building and Civil works. The file produced by the official liquidator shows that there was correspondence between him and the petitioners with regard to the contents etc. of the sale deed to be executed by him i.e. official liquidator. Here, I am constrained to observe that the official liquidator does not seem to have acted fairly while executing the sale deed in question, and seems to have made an attempt to favour the petitioners by suppressing certain facts and incorporating the undermentioned highlighted portion in page 3 of the sale deed in question reading -

> "AND WHEREAS the total sale consideration is Rs.8.35 crores for the entire assets of the company comprising of land, building, Civil works, plant & machinery and current assets, etc., **An amount of Rs.1,01,05,000/- is taken as the value of the land, building and civil works basing on the offer received by the official liquidator when the assets were put for sale individually** and the purchaser has agreed to pay the stamp duty/registration fees/transfer fees as per the value derived by the sub registrar."

Obviously that statement, mentioning the value of the building etc. as Rs.1,01,05,000/- is made on the basis of the offers received by him (official liquidator) on 04-12-2003 whereat M/s.Bhagya Nagar Metals Ltd., offered Rs.101.05 lakhs for Lot No.1 and Rs.301.00 lakhs for Lot No.2, and M/s.Mahavir Ghantakaram Enterprises offered Rs.29.50 lakhs for Lot No.3. So, it is clear that the total value of the offers for the three lots received by the official liquidator, on 04-12-2003, was Rs.431.55 lakhs. But, on

30-12-2003, M/s.Concast Ispat Ltd., which (as per the letter dated 13-08-2004 of the General Manager, District Industries Centre, Srikakulam, addressed to the fourth respondent, relied on by the petitioners, produced as a material document along with the petition) seems to be a group company of the petitioners, gave a consolidated offer for Rs.576.00 lakhs for the three lots put together, and the bid ultimately was knocked down in favour of the second petitioner for Rs.835.00 lakhs, for all the three lots put together, in the court auction held on 04-02-2004. Thus, official liquidator knows, and if he were to say that he does not know, should be imputed with knowledge that the offer dated 04-12-2003 for the Land, Buildings and Civil works for Rs.101.05 lakhs does not truly and correctly represent the value of the Land, Buildings and Civil works. In fact, in his letter bearing No.OL/AP/RCC.10/ 2001/AR/2004 dated 04-02-2004 addressed to the second petitioner, official liquidator stated:

> "With reference to the open auction held on 4-2-2004 before the Hon'ble High Court of Andhra Pradesh, Hyderabad in the matter of sale of entire assets of the subject company I am to inform you that the Hon'ble High Court vide their order dt.4-2-2004 made in C.A.No.736/2003 accepted your offer for the purchase of entire assets of the company as one Lot i.e., Land & Buildings & Civil Works, Plant and Machinery and Current Assets, Furniture & Fixtures including Swaraj Mazda Vehicle lying at Dusi Village, Srikakulam District for a total sale consideration of Rs.8,35,00,000/-. The Hon'ble High Court was pleased to grant three months from the date of confirmation i.e., 4-2-2004 for making balance sale consideration of Rs.6.28 Crores as follows: ....."

Yet, the official liquidator, for reasons known to him only, mentioned the non-existing 'offer value' of Rs.101.05 lakhs as the value of the Land, Buildings and Civil works, in the sale deed.

7. I must also mention that the file produced by the official liquidator contains a copy of the letter RCC.No.10/2001/208 addressed by him to the Chief Manager, United Western Bank Ltd., Hyderabad Branch, dated '06-05-2002' (obviously, a mistake for 06-5-2004) relating to the assets of the company. It reads:

> "With reference to your letter dt.17-12-2003, and the subsequent visit made by your officials namely Sri G.S.Iyer and Sri Murali Krishna, seeking some clarification in respect of valuation of the property owned by the Company in liquidation, with further request to spare a copy of the valuation report submitted by IDBI, I am to advise you that as you have no charge on the fixed assets of the Company, and as you have not paid the valuation fees for the purpose of valuing the said property, you have no right whatsoever to claim a copy of the said valuation report. However, on a specific request made by you, read with the letter No.5392/LD/HBO/IDBI/04, dt.16-01-2004 of IDBI, it is understood that you have exclusive charge on one of the DG sets available in the factory premises. ....." (underlining mine) (unnecessary portion

omitted)

Therefore, it is clear that valuation report of the IDBI with regard to the assets of the company is available with the official liquidator. Had he mentioned the value shown therein as the value of the Land, Buildings and Civil works, there can be no scope for making any comment against the official liquidator. Forgetting that he, as a statutory authority, is expected to act fairly, and has to place all facts in the sale deed executed by him before presenting it to the Sub-Registrar for registration, official liquidator, who very well knew that the assets of the company were sold for almost double the price than the offers that were received by him on 04-12-2003, was in error in mentioning the 'ceased to exist' offer price dated
04-12-2003 in the sale deed in question, and failed to explain to the Court as to why he had to make such a mention in the sale deed in question when in his order dated 15-06-2004 in C.A.No.1202 of 2004 in C.A.No.736 of 2003 (copy of which is also produced by the petitioners as a material paper), the learned Judge observed-

> "Insofar as the relief in the application to direct the Official Liquidator to execute the sale deed in favour of M/s.Dankuni Steels Limited for a consideration of Rs.40,13,000/- (Rupees forty lakh and thirteen thousand only) is confirmed in the auction conducted by this Court, as the land, building and machinery of the company in liquidation was sold to the applicant company at a price of Rs.8,35,00,000/- (Rupees eight crore thirty five lakh only), it would be better if the issue as to the value of the property in respect of which a conveyance deed has to be executed is decided by the Registration Authorities."

8. In R.C.C.No.10/2001/ AR/2004 dated 05-8-2004 sent by him, in reply to the memo impugned in W.P.No.16104 of 2004 issued by the third respondent, official liquidator stated as follows.

> "In pursuance of the orders of the Hon'ble High Court of Andhra Pradesh, Hyderabad in the reference cited, I have executed a sale deed dated 05-08-2004, in favour of M/s.Dankuni Steels Limited, Kolkatta transferring the assets of the company M/s.Midwest Iron and Steel Limited, Dusi Village, Srikakulam District which is in liquidation for Rs.1,01,05,000/- and signed all the connected statements of the said document. The document has to be registered in your office. The entire assets of the company of Land & Buildings and civil Works, Plant and Machinery, Current assets, Furniture and Fixtures including Swaraj Mazda were sold by this office for Rs.8.35 Crores as per the directions of the Hon'ble High Court of Andhra Pradesh and an amount of Rs.1,01,05,000/- has been taken as the value of the Land & Buildings and Civil Works for the execution of the Sale deed in favour of M/s.Dankuni Steels Limited basing on the offer received by Official liquidator when the assets were put for sale individually. However, if the Sub-Registrar is of the view that the said Land & Buildings is of more value, the same may be considered for executing the present Sale Deed. ..... (unnecessary portion omitted)" (underlining mine)

But no such order of the Court is available in the file. I do not wish to state anything further on this aspect.

9. Since the sale deed in question, presented for registration, states that consideration for sale of the property sold is Rs.8.35 crores, and when stamp duty is paid only on Rs.101.05 lakhs, as per Sections 27 and 47A of Stamp Act read with A.P. Stamps (Prevention of Undervaluation of Instruments) Rules, 1975, third respondent has power to keep Registration of such document pending, to find out the correct value, in spite of the fact that the document is executed by the official liquidator (who for the reasons mentioned above clearly suppressed real facts, and even tried to mislead the third respondent by quoting a non-existing court order), third respondent issuing the check slip impugned in W.P.No.16104 of 2004 cannot be said to be erroneous and so, I find no merits in W.P.No.16104 of 2004.

W.P.No.19900 of 2004:

10. Since the sale deed in question is executed in respect of immovable property specified in the boundaries mentioned therein, and since all the assets of the company, including plant and machinery, and current assets and Swaraj Mazda vehicle also are situated within those boundaries, the point for consideration in this petition is whether plant and machinery of the company are covered by the sale deed in question or not.

11. C.A.No.1202 of 2004 is filed by the second petitioner inter alia seeking a direction to the official liquidator to execute a sale deed in respect of land, building and civil works for Rs.40,13,000/- and a sale certificate for Rs.751.27 lakhs in respect of plant and machinery in favour of first petitioner. I have extracted a part of the order, which I felt relevant for disposal of W.P.No.16104 of 2004, above. The learned Judge, after considering the report of the official liquidator that M/s.Concast

Ispat Limited participated in the auction and subsequently second petitioner came into picture by reason of an internal arrangement between second petitioner and M/s.Concast Ispat Limited, and that identity of the first petitioner is not disclosed, observed as follows.

> "There cannot be any valid objection for the Official liquidator to register the sale deed in favour of M/s.Dankuni Steels Limited *(first petitioner)*. The learned counsel also placed before me Form No.32 issued by the Office of Registrar of Companies, Calcutta, showing that Sri Amit Ganguly, S/o late B.N.Ganguly, who is the Director of applicant company in M/s.Dankuni Steels Limited. A certificate issued by the Director of the applicant company placed before the Court would show that the applicant company holds .....In so far as the relationship between the applicant company *(second petitioner)* and M/s.Dankuni Steels Limited *(first petitioner)*, this Court is satisfied that the applicant is justified in taking sale deed in favour of M/s.Dankuni Steels Limited."

Therefore, there can be no doubt that petitioners and M/s.Concast Ispat Limited are group companies.

12. Earlier to filing of C.A.No.1202 of 2004, second petitioner filed C.A.No.823 of 2004 seeking permission of the Court to get the plant and machinery of the Company repaired and overhauled. The specific averment in para-4 of the affidavit filed in support of that application is

> "I further submit that in view of the applicant company intending to revive the unit and run it, it is just and necessary that the plant and machinery to repair and overhauled."

On 06-04-2004, a learned single Judge passed the following order in the said C.A.No.823 of 2004.

> "M/s.S.M.C. Marketing (P) Ltd., Calcutta is the applicant in this application. The said company approached this Court for permission to get the plant and machinery of M/s.Midwest Iron & Steel Limited (in liquidation) situated at Dusi, Srikakulam, repaired and overhauled and also undertake jungle clearance within the factory premises. As per the report filed by the Official liquidator dt.5.4.2004, the applicant herein became highest bidder at Rs.8,35,00,000/- (Rupees eight crores thirty five lakhs only) and as per the orders of this Court it has already paid two instalments of Rs.2,00,00,000/- (Rupees two crores only) each in addition to the earnest money deposit and 20% of bid amount at Rs.2,07,00,000/-. The last and final instalment of Rs.2,28,00,000/- falls due on 4.5.2004. Though the application is not seriously opposed, the Official liquidator requested the Court to impose the following two conditions while ordering permission. Sri S.Ravi, learned counsel, for the applicant company does not oppose imposing of two conditions.
>
> Therefore, this application is ordered and it shall be open to the applicant company to undertake the repair and overhauling operations as well as jungle clearance operations within the factory premises. It is made clear that if the applicant company fails to pay

the balance of Rs.2,28,00,000/- (Rupees two crores twenty eight lakhs only) on or before 4.5.2004, it shall be open to the Official liquidator to forthwith takeover possession of the property and the applicant shall not claim any equities.

The Company Application is accordingly ordered."

Letter No.1769/A4/04 dated 13-08-2004 addressed by the General Manager, District Industries Centre, Srikakulam to the District Registrar, Srikakulam (referred to in para-6 supra) reads -

"the Commissioner of Industries, Andhra Pradesh, Hyderabad informed that M/s.Concast Ferro Inc, Dusi Village, Amadalavalasa Mandal, Srikakulam District who have obtained IEM No.2284/SIA/IMO/2004 dt.25.06.2004 for establishing unit for the line of activity (1) Pig Iron (2) Granualated slag and (3) Coke Fines by acquiring the sick unit through official liquidator, High Court of Andhra Pradesh as a new entrepreneur is entitled for availing 50% Exemption Duty exclusive under NIP 2000-2005 scheme.

Therefore I request you kindly allow 50% stamp duty, Registration fee and transfer for loan agreements, credit deeds, mortgages and hypothecation deeds executed by the Industrial unit in favour of banks or financial institutions on lands meant for industrial units after fulfilling the formalities in terms of G.O.Ms.No.103 Revenue (Registration) Department dt.07.02.2001."

Since second petitioner sought permission to get the machinery repaired and overhauled, and since the above extracted letter dated 13-08-2004 shows that M/s.Concast Ferro Alloys (obviously a mistake for M/s.Concast Ispat Limited, which is a group company of petitioners) obtained permission for establishing Pig Iron, Granualated slag and Coke Fines by acquiring the assets of the company, it is clear that petitioners are using the plant and machinery for their business and have no intention to remove and sell them as scrap or otherwise. If the petitioners were to say that M/s.Concast Ferro Alloys Inc (or M/s.Concast Ispat Limited) has no concern with them, they would not have produced the letter dated 13-08-2004 of the General Manager, District Industries Centre, Srikakulam, extracted above, as a material paper.

13. G.O.Ms.No.103 Revenue (Registration.II) Department dated 07-02-2001, relied on by the petitioners, reads –

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Indian Stamp Act, 1899 – 50% Exemption from payment of Stamp Duty and Registration Fee on the instruments of leases, lease-cum-sales and sales executed in favour of Industrial Units in the State for the purposes of selling up or expansion or development of Industries – Orders – Issued.

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REVENUE (REGISTRATION.II) DEPARTMENT

G.O.Ms.No.103. Dated: 07.02.2001.

Read the following:-

1. Letter from the Chairman and Managing Director, A.P.I.I.C. No.SIPC/APIIC/M(Pig)/97, dt.11.5.2000.

2. From the Commissioner and Inspector General of Registration and Stamps Letter No.S1/10783/2000, dt.28.9.2000 and even No., dt.17.11.2000.

3. G.O.Ms.No.9, Industries & Commerce Department, dt.5.1.2001.

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O R D E R:-

In pursuance of the decisions of the SIPD, orders were issued in G.O.Ms.No.9, Industries & Commerce Department, dt.5.1.2001, enunciating a New Industrial Policy for 2000-2005. Among various other decisions, exemption of 50% Stamp Duty, Registration Fee and Transfer Duty was allowed on lands meant for Industrial use. Exemption of Stamp Duty and Registration Fee for loan agreements, credit deeds, mortgages and hypothecation deeds executed by the Industries in favour of banks or financial institutions has also been included in the Policy. New Industrial Units other than listed as 'ineligible' in the Government orders cited third above, would be eligible for the concession in stamp duty and registration fees as notified below.

Basing on the above decision, the following Notifications will be published in the next issue of the Andhra Pradesh Gazette:-

NOTIFICATION – I

In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), the Government of Andhra Pradesh hereby reduces the stamp duty by 50 percent on the instruments of leases, lease-cum-sales and sales executed in favour of Industrial units and also remits Stamp Duty in full on loan agreements, credit deeds, mortgages and hypothecation deeds executed by such Industrial units in favour of banks or financial institutions for the purposes of setting up or expansion or development of Industries.

NOTIFICATION – II

In exercise of the powers conferred under Section 78 of the Registration Act, 1908 (Central Act XVI of 1908), the Governor of Andhra Pradesh hereby makes the following amendment to the "Table of Fees" issued in G.O.Ms.No.1637, Revenue Department, dated the 3rd September, 1958 and published at pages 2250 to 2253 of Part I of the Andhra Pradesh Gazette, Dated:11.09.1993 is subsequently amended from time to time.

AMENDMENT

In the said "Table of Fees" in article 1(a), after clause "K (XCXXIV)", the following clause shall be added, namely:-

"K (XCXXV) : The Registration Fee leviable under this Article on the instructions of leases, lease-cum-sales and sales executed in favour of industrial units shall be reduced by 50 percent and no registration fee shall be leviable on loan agreements, credit deeds, mortgages and hypothecation deeds executed by such industrial units in favour of banks or financial institutions for the purposes of setting up or expansion or development of industries".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

K.C.MISRA

PRINCIPAL SECRETARY TO GOVERNMENT"

So, it is clear that benefit of the above G.O. can be claimed only by an 'industrial unit'. Since there cannot be an 'industrial unit' without plant and machinery, and since petitioners are claiming benefit of the aforesaid G.O., it is clear that they intend to run the assets of the company and have no intention to remove the plant and machinery, and would use it as a part and parcel of the building in which they are located. From a combined reading of Section 3 of Transfer of Property Act, Section 2(6) of Registration Act and Section 3(26) of General Clauses Act, it is clear that plant and machinery of the company, purchased by second petitioner in court auction, also are immovable properties forming part of the land and buildings in or on which they are located. In my considered opinion, petitioners claiming benefit under G.O.Ms.No.103 dated 07.02.2001, while contending that the sale deed in question is for Land, Buildings and Civil works only, but not plant and machinery, would be incongruous, because the intention of the Government in passing the above G.O., obviously, is to give benefit to 'industrial units'. It does not enable an owner of an 'industrial unit' purchasing vacant land, claiming benefit of the G.O., just to sell it away as plots and make money. The intention of the government obviously

is that 'industrial unit' should be established in the land and that the land should itself be used, for running an 'industrial unit' by the purchaser. So, it is clear that the above extracted G.O. is meant to encourage establishment and running of industrial units only. Since petitioners are claiming benefit of the above extracted G.O. and since they also obtained permission from the Court to clean and over haul the machinery, it is clear that the sale deed in question covers not only Land, Buildings and Civil works but plant and machinery also.

14. **M/s.Sri Bharatia Pulverisers Private Limited** case (1 supra), relied on by the learned counsel for the petitioners is the judgment in a writ appeal. In para-5 of the said judgment relevant portion of the order of the learned single Judge (against whose order that appeal was preferred) is extracted. It reads-

> "As discussed above, the petitioner has no doubt purchased the 'land and building' and 'plant and machinery' in the public auction on 26-03-1996 for a consideration of Rs.5.00 lakhs and Rs.20.00 lakhs respectively. The petitioner has opted to register only the land and building which he purchased for Rs.5.00 lakhs in the public auction and presented to the first respondent under document No.P1/97 dated 21-3-1997, by paying necessary stamp duty and registration fees. The purpose of registering the land and building by the petitioner is for obtaining necessary loans by pledging the land and building to the bank, which would enable the petitioner to run the cement Unit."

So, it is clear that in that case land and buildings; plant and machinery were sold as two different lots. When Plant and machinery are sold as a separate lot, it can be treated as 'goods' because "goods", as defined in Section 2(7) of the Sale of Goods Act, 1930, means

> "every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached, to or forming part of the land which are agreed to be severed before sale or under the contract of sale." (underlining mine)

but when plant and machinery are sold as a part and parcel of the land and building, they would be immovable property, because the apex Court in **M/S.DUNCANS INDUSTRIES LTD** case (2 supra) held as follows:

> In order to decide the further question as to whether the vendor did transfer the title of the plant and machinery in the instant case by the conveyance deed, it is again imperative to ascertain the intention of the parties from the material available on record. While ascertaining the intention of the parties, one cannot preclude the

> contents of the agreement pursuant to which the conveyance deed in question has come into existence. As per the agreement it is clear that what was agreed to be sold was the entire business of fertilizer on an "as is where is" basis including the land, building thereon, plant and machinery relating to fertilizer business. It is not the case of the appellant that the machineries were dismantled and given to the appellant, nor is it possible to visualize from the nature of the plant that what was involved in the instant case was that such a possession dehors the land could be given by the vendor to the appellant. It is obviously to reduce the market value of the property the document in question was attempted to be drafted as a conveyance deed regarding the land only. Apart from the recitals in the agreement of sale, it is clear from the recitals……" (underlining mine)

In this case since the property covered by the sale deed in question covers not only the land, buildings and civil works, but plant and machinery also, value of the plant and machinery also has to be taken into consideration for the purpose of payment of stamp duty.

15. Fourth respondent calculated the stamp duty payable on the sale deed in question under Article 47A of Schedule 1A of the Stamp Act. Since that Article refers to 'sale' as defined in Section 54 of Transfer of Property Act, which covers only sale of immovable property, but not movable property, and since second petitioner purchased Current Assets and Swaraj Mazda vehicle of the company also, which are but movable properties, their value need not and cannot be taken into consideration for arriving at the stamp duty payable. So, their value has to be deducted from out of Rs.8.35 Crores. Here, I must state that I wonder if petitioners, at whose instance the official liquidator seems to have taken the value of Land, Buildings and Civil works as Rs.101.05 lakhs (as per the offer received by him on 04.12.2003) would be agreeable to take Rs.29.50 lakhs, which was the highest offer received by the official liquidator on 04.12.2003, as third lot. I am sure they would not agree that that value is the correct value of the Current assets and Swaraj Mazda vehicle.

16. In the above circumstances, I deem it fit to remit the case to the fourth respondent (District Registrar) to estimate the value of the Current Assets and Swaraj Mazda vehicle and deduct their value from Rs.8.35 crores and arrive at the stamp duty payable on the document in question.

17. Since first petitioner is an industry and wants to run that unit as an industry, for the reasons mentioned above, benefit of G.O.Ms.No.103 Revenue (Registration)

Department, Dt.07.02.2001 can be extended to first petitioner.

18. In the result, W.P.No.16104 of 2004 is dismissed with costs and W.P.No.19900 of 2004 is allowed in part and the case is remitted to the fourth respondent (District Registrar, Srikakulam) with a direction to evaluate the Current assets and Swaraj Mazda vehicle of the Company, sold to the petitioner and deduct their value from Rs.8.35 crores and take the remaining value as the value of the Land, Buildings, Civil works, plant and machinery and collect stamp duty and penalty, if any, thereon, by extending the benefit of the G.O.Ms.No.103 Revenue (Registration) Department dt.07.02.2001 to them. Parties are directed to bear their own costs.

(C.Y.Somayajulu, J.)

Date: 12-07-2005

Cvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting the Chief Justice, on this Tuesday the Twelfth day of July, Two thousand and Five.

REGISTRAR

To

1. The General manager, District Industries Centre, Srikakulam, Srikakulam District.

2. The Sub-Registrar, Amudalavalasa, Srikakulam District.

3. The District Registrar of Assurances & Collector, Under Sec 40 of the Indian Stamp Act, 1989, Srikakulam.

4. 2 CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

5. 2 CCs to MR.SHYAM S.AGRAWAL

6. 1 CC to MR.RAVI

7. 2 CD copies